

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KENNETH RAYMOND McKETTRICK,	:	CIVIL ACTION NO. 4:CV-06-0329
	:	
Plaintiff	:	(Judge McClure)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
LT. McCONNELL,	:	
	:	
Defendant	:	

REPORT AND RECOMMENDATION

The Plaintiff, an inmate at the United States Penitentiary at Lewisburg, Pennsylvania, Pennsylvania, filed this civil rights action, pursuant to 28 U.S.C. § 1331, on February 14, 2006. Plaintiff is proceeding *pro se*.

The matter is currently proceeding on an Amended Complaint (Doc. 14), which is the subject of a Motion to Dismiss and/or for Summary Judgment filed by the sole remaining Defendant, Lt. McConnell, on November 22, 2006. (Doc. 16). Defendant's Motion is not yet ripe for disposition.

On December 11, 2006, Plaintiff filed with the Court a one-page document entitled "Dismiss Motion" (**Doc. 33**), wherein he states, ". . . I dismiss my lawsuit against Lt. McConnell . . ."

Under Rule 41(a)(2) of the Federal Rules of Civil Procedure, "an action shall not be dismissed at the Plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper."

Based on the foregoing, it is respectfully recommended that the Plaintiff's filing of December 11, 2006 (**Doc. 33**) be construed as a Notice of Dismissal under Rule 41(a)(2) of the Federal Rules of Civil Procedure and that this case be dismissed without prejudice.

s/ Thomas M. Blewitt
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: December 15, 2006

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	:	
Defendant	:	

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing
Report and Recommendation dated **December 15, 2006**.

Any party may obtain a review of the Report and Recommendation pursuant to
Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the

magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

s/ Thomas M. Blewitt
THOMAS M. BLEWITT
United States Magistrate Judge

Dated: December 15, 2006